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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,731	12/10/2003	Timothy M. Holub	306230	6694
33042	7590	02/23/2006	EXAMINER	
LEYDIG, VOIT & MAYER, LTD. (SEATTLE OFFICE) TWO PRUDENTIAL PLAZA SUITE 4900 CHICAGO, IL 60601-6780			YIP, WINNIE S	
			ART UNIT	PAPER NUMBER
			3636	
				DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/732,731	HOLUB, TIMOTHY M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Winnie Yip	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 10 December 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date June 9, 2005.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This is a first office action for application Serial No. 10/732,731 filed December 10, 2003.

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feature of “downwardly extending structural support” (claims 1, 4, 9, 11-12, 17, 19-20) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

2. Claim 18 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. In this claim, the functional limitation of “means...” has been defined previously in claim 17 (lines 7-80). Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the following features: first/second downwardly extending structural supports (claims 1, 4, 9, 11-12, 17, 19-20) and “fixed for rotation therewith” (claims 1 and 17). According to the specification, the upright poles are attached to the hubs and lower poles are attached to a bend to the upright pole “without the poles rotation” but not for “rotation therewith” as claimed. Clarification is required. No new matter can be entered.

5. Claims 1-20 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

**According to the confusion, the claims 1 and 17 are being treated as “the downwardly extending structural support being connected to the first upper pole and fixed for no rotation therewith” on the merits.**

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regard to claims 1,3,6, 13, 17, the terms “the first pole” (claim 1, line 9; claim 6, line 1; claim 13, lines 1 and 3; claim 17, line 9), and “the second pole” (claim 3, line 3; claim 6, line 7) lack same terminology as previously defined . A proper antecedent basis is required.

Regarding claims 1 and 17, the claimed limitations of the “downwardly extending structure support connected to the first pole and “fixed for rotation therewith” does not consist to the body of the claimed invention as defined in the specification. According to the specification, the upright pole is attached to the hub and the lower pole is attached to a bend to the upright pole for “without the poles rotation” but not for “rotation therewith” as claimed.

Regarding claims 11 and 16, the phrase “similar to” held the claims infinite since it was not clear what applicant intended to cover by the citation of “similar pole” as relative to the first upper pole. Thereby rendering the scope of the claim(s) unsearchable.

Regarding claims 5, 10, and 20, the language “wherein the first/second upright pole comprises the first/second upper pole, the first/second downwardly extending structural support,

and the first/second lower pole" is confusing whether the first/second downwardly extending structural support and the first/second lower pole are parts of the "pole assembly" or parts of the first/second upright pole. Appropriated correction is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-6, 9-13, 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (US Patent No. 5,732,726).

Lee shows and teaches a shelter (10) comprising : a pole assembly comprising at least one hub (20 or 42), four /three upright poles each of which includes a upper pole (16) having one end being removably and non-rotatably attached to the hub, a downwardly extending structure support (18) connected to opposite end of the upper poles, and a lower pole (14) connected to and extending downward from the downwardly extending structure support respectively, and a canopy (12) supported over the pole assembly, wherein the hub has a plurality of tubular arms (60) with respect to the number of the upper poles to be connected thereto, each arm (60) having an opening (61) for receiving the upper end of the upright pole, and the arm having an elongated slot for receiving attachment means formed on an other end of the pole such that the upper pole is removably and non-rotatably attached to the hub. Wherein the downwardly extending structure support (18) having two circular holes (54) such that the lower pole (14) is rotatably attached into the circular opening as claimed.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 7-8 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee '726 as applied to claims 1 and 13 above, and further in view of Lin et al. (US Patent No. 6,418,949).

The claims are considered to meet by Line et al. as explained and applied set forth above rejections except that the Line et al. does not define the connection between the pole and hub having one of the pole or hub having an oblong cross section for providing a non-rotatably connection therebetween. Lin et al. '949 teaches a connection between two elongated elements (11 and 12), each of the elements having a oblong cross section with a flat portion that movably engage each other without rotation therebetween. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the shelter of Lee '726 having one end of the upper pole and the opening of the arm of the hub being formed with a oblong cross section with one flat portion that engage each other when the end of the pole is inserted in opening of the arm of the hub as taught by Lin et al. for providing a removable attachment but not rotatable connection between the hub and the poles. .

***Citations***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ju '646, Larga et al. '898, Ju '551, Bareis '542, Hagler et al. Tsai '461, and

Japanese Patent No.4-213671, November '848, teach various shelters having a plurality of upright poles connected to a central hub without rotation as similar to the claimed invention. Balint et al. and Kuo '198 teach two elongate members with oblong cross sections being connected together as similar to the claimed invention.

***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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